

FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement"), dated as of _____, 200_, is made by and between (i) **THE UNITED STATES OF AMERICA**, acting by and through **THE SECRETARY OF THE ARMY** (the "Secretary"), hereinafter referred to as "Lessor", (ii) **NAME OF DEVELOPER**, a **STATE** **limited liability company (or other corporate structure)** ("Developer"), (iii) _____, a _____ ("Ground Tenant"), and (iv) **TITLE COMPANY**, a **Name of State** corporation ("Escrow Agent").

RECITALS:

A. Lessor, acting by and through the Secretary, by the authority of Title 10, United States Code ("USC"), Section 2667 ("Section 2667"), and Developer, have entered into a certain Master Agreement to Lease dated _____, 200_ (the "Master Agreement"), wherein Lessor and Developer have agreed to develop certain property owned by Lessor (referred to therein and herein as the "Project Site") through a series of long term leases (each, an "Enhanced Use Lease"), pursuant to which Developer or another "Ground Tenant" (as defined in the Master Agreement) shall lease from Lessor a portion of the Project Site with the intention of developing and constructing improvements thereon. The Project Site is located on and is a part of a larger tract of land owned by the United States of America, which includes the **Installation** Army base. All such land and improvements on such land from time to time, including without limitation the Project Site and the **Installation** Army base, shall be referred to herein as the "**Name Site**."

B. As contemplated and provided for in the Master Agreement (i) Developer has identified the portion of the Project Site described in **Exhibit " "** attached hereto (the "Lease Premises") for the development and construction of improvements, and (ii) Lessor and Ground Tenant have entered into an Enhanced Use Lease dated as of _____, 200_ (the "Lease"), a copy of which is attached hereto as **Exhibit " "**, and pursuant to which Lessor shall lease the Lease Premises to Ground Tenant, and Ground Tenant shall lease the Lease Premises from Lessor, all on the terms and conditions set forth therein.

C. Pursuant to Section __ of the Lease, in lieu of making rent payments directly to Lessor and to facilitate the collection of the Rent due under the Lease by "in kind" payments as authorized by Section 2667, Ground Tenant has agreed to pay Rent (defined in the Lease) due and payable under the Lease into an escrow account opened and maintained by Escrow Agent for the benefit of Lessor, which Rent amounts shall be held, used and disbursed by Escrow Agent for the purposes and on the terms and conditions set forth in this Agreement.

D. This Agreement shall constitute the "Escrow Agreement" required to be entered into between Lessor, Ground Tenant and Developer in accordance with Section of the Lease.

AGREEMENTS:

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor, acting by and through the Secretary, and by the

authority of Section 2667, and Ground Tenant, Developer and Escrow Agent each hereby agrees as follows:

1. Engagement of Escrow Agent. Lessor, Ground Tenant and Developer collectively hereby appoint Escrow Agent, and Escrow Agent hereby accepts such appointment, to act and serve as the escrow agent under and pursuant to this Agreement.

2. Ground Tenant's Obligations. Without in any manner limiting or intending to affect or modify any of the rights or obligations of Ground Tenant or Lessor (or Developer, if any, as a third-party beneficiary) under or pursuant to the Lease, (a) Ground Tenant shall pay into escrow with Escrow Agent all Rent amounts payable under the Lease (collectively, "Lease Payments") in the amounts and on or prior to the dates required pursuant to the Lease, (b) Ground Tenant acknowledges and agrees that the Lease Payments paid into escrow pursuant to this Agreement may be made available and disbursed to Developer as payment for In-Kind Consideration (defined in the Master Agreement) provided by Developer, or any subsidiary or affiliate of Developer (for purposes of this Agreement and as the context shall so require, the term "Developer" shall mean and include Developer and/or any subsidiary or affiliate of Developer designated by Developer to provide In-Kind Consideration, as applicable), pursuant to any one or more Site Work Agreements (defined in Section 4, below) entered into between Lessor and Developer, (c) all Lease Payments deposited by Ground Tenant into escrow with Escrow Agent shall constitute payment by Ground Tenant under the Lease as of the date deposited into the escrow and shall be deemed, constitute and be credited against payments of Rent amounts required to be made by Ground Tenant under the Lease, and (d) Ground Tenant shall have no rights in or to the Escrow Account (defined in Section 3, below) or the Escrow Funds (defined in Section 3, below) deposited and held in and/or disbursed from the Escrow Account from time to time, except as expressly provided herein or in the Lease.

3. Escrow Account. Escrow Agent shall deposit, hold and maintain all Lease Payments paid into escrow by Ground Tenant pursuant to Paragraph 2 above, in an interest-bearing escrow account (the "Escrow Account") established by Escrow Agent at a bank or other financial institution acceptable to Lessor and Developer, having a branch office in the **City, State** metropolitan area, and otherwise pursuant to the terms hereof. All interest earned on any portion of the Escrow Funds held in escrow by Escrow Agent hereunder shall (a) be added to the principal of the Escrow Funds then held in escrow, (b) constitute a part of the Escrow Funds, (c) be held and disbursed together with and as part of the Escrow Funds in accordance with this Agreement, and (d) for income tax purposes, be deemed earned by Lessor. For purposes hereof, the term "Escrow Funds" shall mean the undisbursed balance of any and all Lease Payments, together with any interest or other proceeds earned or accruing thereon or therefrom, held in the Escrow Account from time to time and available to be disbursed to Lessor and/or Developer in accordance with and as required by this Agreement. Lessor shall not have any ownership in the Escrow Account, but Lessor shall be granted a security interest in the funds deposited in the Escrow Account to which it is entitled. The parties hereto shall execute any reasonable instruments (including UCC financing statements) as may be necessary for Lessor to perfect such security interest.

4. Disbursements of Escrow Funds.

4.1 Purposes for Which Escrow Funds May Be Used. Lessor and Developer intend and agree that the Escrow Funds may be made available and disbursed to either (a) Lessor pursuant to and in accordance with the provisions hereof, or (b) Developer as payment for In-Kind Consideration provided by Developer pursuant to any one or more Site Work Agreement(s). For purposes hereof, the term "Site Work Agreement" shall mean any agreement entered into between Lessor and Developer, pursuant to which Developer agrees to undertake, perform and

complete Site Work in accordance with and as described therein, which Site Work may (but shall not be required to) include, without limitation development, construction and management services in connection with improvements to be constructed on the Lease Premises. "Site Work" shall mean In-Kind Consideration provided by Developer to Lessor and shall consist of and include any work or services provided, undertaken and performed by Developer on or with respect to the NAME Site pursuant to any Site Work Agreement, including without limitation new construction of facilities on and within the Project Site or NAME Site, up-grade of existing facilities on and within the Project Site or NAME Site, repair and maintenance of existing facilities, property management services, engineering services, public relations and community relations services, master planning services, landscaping services, trash and snow removal services, food services, perimeter fence upgrades, and security upgrades (Name specific services here).

4.2 Disbursement of Escrow Funds in Payment of Rent. As provided above, it is the intent of the parties that this Agreement facilitate the collection of the Rent due under the Lease by "in kind" payments as authorized by Section 2667 and as provided in Exhibit " " attached thereto. Lessor shall enter into good faith negotiations with Developer from time to time in order to reach agreement on Site Work that will constitute appropriate In-Kind Consideration and the value of such In-Kind Consideration. Notwithstanding anything contained herein to the contrary, at the written election of Lessor, any Escrow Funds held by Escrow Agent in the Escrow Account shall be paid from the Escrow Account to Lessor within fifteen (15) days after the receipt by Developer and Escrow Agent of written notice from Lessor of such election; provided that such cash payments shall not exceed the balance of the Escrow Funds then held in the Escrow Account less any portion of Escrow Funds required to be disbursed to Developer as payment for any previously agreed to In-Kind Consideration. Cash payments of Escrow Funds required to be disbursed to Lessor pursuant to this Section 4.2 shall be made by check payable to the order of the Finance and Accounting Officer, Baltimore District, and delivered to the U.S. Army Corps of Engineers, ATTN: CENAB-RE-S, P.O. Box 1715, Baltimore, Maryland 21203-1715, all of which checks shall include the lease number assigned to the Lease to ensure proper processing by Lessor.

4.3 Disbursement of Escrow Funds to Pay for In-Kind Consideration. The exact form of In-Kind Consideration to be provided by Developer and for which the Escrow Funds may be used to pay Developer shall be mutually determined by Lessor and Developer and set forth in a Site Work Agreement executed by both Lessor and Developer. All In-Kind Consideration shall be provided by Developer; provided, however, that Developer shall have the right to engage contractors and sub-contractors to perform and complete the respective aspects and components of the Site Work to be performed by Developer under any one or more Site Work Agreements. If, in connection with negotiating any Site Work Agreement, Developer and Lessor have a dispute regarding how to price any construction work that is provided directly by Developer and not by a subcontractor of Developer, then Developer shall either competitively bid such work to determine the appropriate price or agree to subcontract for the provision of such work; it being understood, however, that the executed Site Work Agreement (and not this Agreement) shall specify the price of such work or the method agreed upon for determining the pricing. Under no circumstances shall Developer be required to provide In-Kind Consideration in excess of the Escrow Funds then available for payment to Developer. Developer agrees to use Escrow Funds disbursed from the Escrow Account as compensation pursuant to the applicable Site Work Agreement for providing In-Kind Consideration. Upon the deposit of Lease Payments into the Escrow Account in accordance with this Agreement, Ground Tenant shall be deemed to have satisfied its obligations with respect to the Rent payable under the Lease as to the amount paid, it being expressly understood and agreed that neither Ground Tenant nor Developer shall have any obligation to provide In-Kind Consideration, except to the extent of Site Work not yet completed

under and pursuant to a Site Work Agreement entered into by Lessor and Developer. In-Kind Consideration shall be requested by Lessor and provided by Developer during any Lease Year (defined in the Lease) up to the amount of all Lease Payments paid into the Escrow Account in respect of such Lease Year; provided, however, at Lessor's election, Escrow Funds held in the Escrow Account that have not been expended for In-Kind Consideration in respect of any Lease Year may be carried over to and made available for payment of In-Kind Consideration provided by Developer in subsequent Lease Year(s). In no event shall Developer be required to provide In-Kind Consideration with a value (as determined by agreement between Lessor and Developer) in excess of the total amount of Escrow Funds then held in the Escrow Account.

4.4 Disbursement Procedures for In-Kind Consideration. Developer shall have the right, exercisable not more frequently than once every () days, to submit to Escrow Agent (with a simultaneous copy to Lessor) a Draw Request (hereinafter defined) for payment of any amounts due and payable under any Site Work Agreement in connection with the completion or partial completion of any Site Work provided by Developer as In-Kind Consideration. Within () business days after receipt of a properly prepared and delivered Draw Request, Lessor shall grant or withhold its approval, with a statement of the reasons for withholding such approval, to Developer and Escrow Agent simultaneously. Escrow Agent shall disburse to Developer from Escrow Funds then held in the Escrow Account the amount to which Developer is entitled pursuant to the Draw Request, as long as Lessor has granted approval to Escrow Agent. For purposes of this Agreement, the term "Draw Request" shall mean and include (a) a written request from Developer for a disbursement from the Escrow Account of funds equal to the amount to which Developer is entitled under the applicable Site Work Agreement in connection with the completion or partial completion of any Site Work provided by Developer as In-Kind Consideration pursuant to one or more Site Work Agreement(s), which request shall include the document number assigned to the applicable Site Work Agreement(s) to ensure proper processing by Lessor, and (b) a statement from Developer that the conditions, under the applicable Site Work Agreement, to payment of the amount requested in the Draw Request have occurred.

4.5 Accounting. Escrow Agent shall maintain complete and accurate records of the Lease Payments deposited into the Escrow Account and the disbursements of Escrow Funds out of the Escrow Account for the payment of In-Kind Consideration provided by Developer and, to the extent applicable, cash payments disbursed from Escrow Funds to Lessor pursuant to subparagraph 4.3, above. Not later than days following the end of each calendar year, Escrow Agent shall submit to Lessor, Ground Tenant and Developer a report for the preceding calendar year setting forth a detailed description of (a) the Lease Payments paid into the Escrow Account during such period, (b) Escrow Funds disbursed to Developer in respect of In-Kind Consideration provided during such period, (c) Escrow Funds disbursed to Lessor during such period pursuant to Section 4.3, above, and (d) any balance remaining in the Escrow Account.

5. Notices. Any notice required or permitted to be given hereunder must be in writing and shall be deemed to have been delivered (a) upon confirmed receipt if given by facsimile transmission, provided that (i) such transmission is completed at or prior to 5:00 p.m. City, State time, on the date transmitted, and (ii) an original of such notice is also delivered pursuant to one of the methods described in Sections 5(b) and 5(c), below, for scheduled delivery on the next business day, or (b) one (1) business day after pickup by Emery Air Freight, United Parcel Service (Overnight), Federal Express, or another similar overnight express service, or (c) upon receipt if delivered by local messenger, in any case addressed to the parties at their respective addresses set forth below:

| | |
|-----------------------------|----------------------|
| If to Developer: | Name |
| | Address |
| | City, State Zip |
| | Attn: Name |
| | Telephone: Phone |
| | Facsimile: fax |
| | |
| With a copy to: | Name |
| | Address. |
| | City, State, zip |
| | Attn: Name |
| | Telephone: Phone |
| | Facsimile: Fax |
| If to Ground Tenant: | |
| | |
| | |
| | Attn: |
| | Telephone: |
| | Facsimile: |

| | |
|------------------------|------------------|
| With a copy to: | _____ |
| | _____ |
| | _____ |
| | Attn: _____ |
| | Telephone: _____ |
| | Facsimile: _____ |

| | |
|----------------------|------------------|
| If to Lessor: | _____ |
| | _____ |
| | _____ |
| | Attn: _____ |
| | Telephone: _____ |
| | Facsimile: _____ |

| | | | |
|----------------------------|------------------|-------|---------|
| If to Escrow Agent: | Name | Title | Company |
| | Address | | |
| | City, State, Zip | | |
| | Attention: | Name. | |
| | Telephone: | Phone | |
| | Facsimile: | Fax | |

or in each case to such other address as either party may from time to time designate by giving notice in writing pursuant to this Section 5 to the other party. Notices shall be deemed effective if given by counsel to either party on behalf of such party. Effective notice will be deemed given only as provided above, except as otherwise expressly provided in this Agreement.

6. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

7. Escrow Fee. In consideration of the Escrow Agent's services provided hereunder, Escrow Agent shall be paid \$ _____ per annum by Lessor, such amount to be payable on the Effective Date and each anniversary thereof during the term hereof.

8. Escrow Agent. In performing any of its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for those arising out of its willful default, gross negligence or breach of trust, and Escrow Agent shall accordingly not incur any such liability with respect (a) to any action taken or omitted in good faith upon advice of its counsel, or (b) to any action taken or omitted in reliance upon any written notice or instruction provided for in this Agreement. Escrow Agent shall not be responsible for any and all losses, claims, damages, liabilities and expenses, including reasonable attorneys' fees, which may be incurred by Escrow Agent in connection with its acceptance or performance of its duties hereunder, including any litigation arising from this Agreement or involving the subject matter hereof, except in the case of Escrow Agent's willful default, gross negligence or breach of trust. In the event of a dispute between Developer and Lessor sufficient in the discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender into the registry or custody of any court of competent jurisdiction the Escrow Funds and all other money or property in its hands under this Agreement, together with such legal pleadings as it deems appropriate, and thereupon be discharged from all further duties and liabilities under this Agreement.

9. Term. This Agreement shall terminate upon the expiration of the Lease and the payment of all remaining funds in the Escrow Account pursuant to the terms hereof, or upon the earlier mutual agreement of all of the parties hereto and payment of all remaining funds in the Escrow Account pursuant to the terms hereof.

IN WITNESS WHEREOF, Developer, Ground Tenant, Lessor and Escrow Agent have executed this Escrow Agreement, as of the date first written above.

LESSOR:

By: _____
Name:
Title:

DEVELOPER:

NAME

By: _____
Name:
Title:

GROUND TENANT:

By: _____
Name:
Title:

ESCROW AGENT:

NAME TITLE COMPANY

By: _____
Name:
Title: